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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,909

04/08/2004

Eric E. Thorvaldson SR.

ET194-1

8843

21238

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11/04/2005

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/820,909	Applicant(s) THORVALDSON, ERIC E.	
	Examiner Hilary Gutman	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,10,21,28-30 and 32-39 is/are rejected.
- 7) ☒ Claim(s) 2-8,11-27,31 and 40-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9, 21, 29, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker et al.

Parker et al. (3,740,097) disclose a vehicle dump body elevation device comprising: at least one hinge assembly for attaching a dump body to a vehicle frame, the hinge assembly having a lowered position wherein the dump body is substantially horizontal and a raised position wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on the vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly while pivoting the dump body to the raised position; and at least one hoist having a lower end pivotally attached to the vehicle frame and an upper end pivotally attached to the dump body.

With regard to claim 9, the hoist comprises a scissor hoist mechanism.

For claim 21, Parker et al. disclose a kit for modifying a vehicle to function as a dump truck, the kit comprising: at least one hinge assembly to move a dump body between a lowered position, wherein the dump body is substantially horizontal, and a raised position, wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and

wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on a vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly, while pivoting the dump body to the angled position; and at least one hoist having a first means for pivotal attachment to the vehicle frame and a second means for pivotal attachment to the dump body.

With regard to claim 29, the hoist is a scissor hoist mechanism.

For claim 39, Parker et al. (3,740,097) inherently disclose a method of converting a vehicle from a fixed bed vehicle to a dump truck, the method comprising: a) removing a fixed bed from a vehicle; b) providing a vehicle dump body elevation device comprising at least one hinge assembly to move a dump body between a lowered position wherein the dump body is substantially horizontal, and a raised position wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on the vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly, while pivoting the dump body to the raised position; and at least one hoist having a first means for pivotal attachment to a vehicle frame and a second means for pivotal attachment to the dump body; c) mounting the hinge assembly to the vehicle frame; d) mounting the hoist to the vehicle frame; and e) mounting the hinge assembly and the hoist to the dump body.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. as applied to claims 9 and 29 above and further in view of Ray.

Parker et al. lack the scissor hoist mechanism having a range of motion and rotation up to about 180 degrees.

Ray (4,019,781) teaches a hoist for a vehicle dump body elevation device having a scissor hoist mechanism with a range of motion up to about 180 degrees.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a scissor hoist mechanism as taught by Ray in place of the hoist of Parker et al. in order to allow the dump body to further rotate and allow better dumping of the contents therein.

#### *Allowable Subject Matter*

5. Claims 28, and 32-38 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claims 2-8, 11-20, 22-27, 31, and 40-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

7. Applicant's arguments filed 10/4/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the removal of the tailgate and bumper) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to applicant's assertion that Parker et al. fails to disclose a vehicle dump bed that elevates clear of a rear bumper, the examiner notes that Parker et al. indeed disclose this feature as clearly seen in Figures 2, 6, and 8.

Applicant further states that Parker et al. fail to disclose an upward movement of both the front and rear portions in addition to pivoting the dump body to an angled position. The examiner disagrees here as well and notes that Parker et al. disclose these features. As seen in Figure 6, both front and rear portions of the dump body are moved upward (as compared with the lowered position of Figure 5) and are also angled.

The applicant argues Parker et al. fail to disclose removal of a fixed bed from a vehicle as recited in claim 39. However, it is evident that the removal of pins 84, 86 and pin 104 would allow for removal of the bed 30.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the hoist extended to 180 degrees) are not recited in the rejected claim(s). Although the claims are

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interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Specifically, the claim simply recites that the hoist need extend “up to about” 180 degrees and it is apparent from the disclosure that the hoist of Ray is capable of this rotation.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

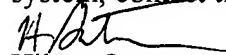
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hilary Gutman

November 1, 2005